EXHIBIT A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 1118, 1119—September Term, 1974.

(Argued June 18, 1975 Decided August 22, 1975.)

Docket Nos. 75-7177, 75-7178

LONG ISLAND LIGHTING COMPANY,

Appellant,

v.

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL OIL CORPORATION, CHEVRON OIL TRADING COMPANY and TEXACO OVERSEAS PETROLEUM COMPANY,

Appellees.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Appellant,

v.

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL OIL CORPORATION, CHEVRON OIL TRADING COMPANY and TEXACO OVERSEAS PETROLEUM COMPANY,

Appellees.

Before:

GIBBONS,* GURFEIN and MESKILL,

Circuit Judges.

* United States Circuit Judge for the Third Circuit, sitting by designation.

Exhibit A

Appeal from orders entered by the United States District Court for the Southern District of New York, Inzer B. Wyatt, *Judge*, in a consolidated action dismissing plaintiffs' antitrust counts in both complaints pursuant to Rule 12(b)(6), Fed. R. Civ. P., on the ground, that plaintiffs were not within the "target area" of the defendants' alleged conspiracy involving a group boycott of Libyan oil.

Held, order affirmed as to dismissal of the first count in each complaint, but reversed and remanded for further proceedings with respect to the second count in the LILCO complaint alleging a conspiracy to reduce the supply of oil and to raise the prices charged thereof to electric utilities.

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Exhibit A

GIBBONS, *Circuit Judge:*

This is a consolidated appeal by Long Island Lighting Company (LILCO), and Consolidated Edison Company of New York, Inc. (CON EDISON). Both companies were plaintiffs in separate antitrust actions which had been consolidated for trial in the district court. That court granted the defendants' joint motion, pursuant to Rule 12(b)(6), Fed. R. Civ. P., to dismiss the first and second counts of the LILCO complaint and the first count of the CON EDISON complaint.[1] We affirm the dismissal of the first count in both complaints, but reverse the dismissal of the second count of the LILCO complaint and remand that claim to the district court for further proceedings.

The plaintiffs LILCO and CON EDISON are public utilities that generate and distribute electricity for consumption in the State of New York. The defendants are three integrated petroleum companies and two of their subsidiaries: Standard Oil Company of California (SOCAL) and its wholly-owned subsidiary Chevron Oil Trading Company; Texaco, Inc. (TEXACO) and its wholly-owned subsidiary Texaco Overseas Petroleum Company; and Mobil Oil Corporation (MOBIL).

In order to generate electricity, LILCO and CON EDISON purchase low sulphur residual fuel oil which is produced in the course of refining low sulphur crude oil. Environmental regulations require that utilities burn low sulphur residual fuel oil in most of their fossil fuel generating plants. This case grows out of the very sharp increase in price of that grade of oil beginning late in 1973, and it

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1 In each case a state law claim against SOCAL for interference with a contractual relationship remains undisposed of. The district court expressly determined, pursuant to Rule 54(b), Fed. R. Civ. P., that there was no just reason for delaying the entry of final judgments. Thus we have jurisdiction under 28 U.S.C. § 1291.

presents the issue whether LILCO and CON EDISON may recover damages under § 4 of the Clayton Act, 15 U.S.C. § 15, or obtain injunctive relief under § 16 of the Clayton Act, 15 U.S.C. § 26, by reason of the actions of the defendants alleged in the complaint. The allegations of the first count of each complaint are identical for all purposes relevant to this appeal and will be treated together. The second count of the LILCO complaint requires separate treatment. However, with respect to each count, the question presented is whether a Rule 12(b)(6) motion to dismiss was properly granted.

I. The First Count

In addition to the parties in this action, the complaints refer to activities by the following:

LIBYA—The Libyan Arab Republic, in which are located deposits of low sulphur crude oil.

NOC—The Libyan National Oil Company, an oil corporation owned by the Libyan government.

AMOSEAS—American Overseas Petroleum Limited, a company jointly owned by SOCAL and TEXACO, which in 1973 was engaged in crude oil drilling and producing in Libya at oil concessions granted by that government.

ARAMCO—Arabian American Oil Company, a company jointly owned by SOCAL, TEXACO, MOBIL, Exxon corporation, and the government of Saudi Arabia, engaged in the production, refining and transportation of crude oil produced in Saudi Arabia, a Persian Gulf state.

OPEC—The Organization of Petroleum Exporting Countries, an organization of certain Asian, African and

Latin American countries, which account for the bulk of the known world crude oil reserves, of which Libya and Saudi Arabia are members.

LPG—The London Policy Group, a group of major oil companies with interests in OPEC countries formed in January 1971 to plan policy with respect to, and to bargain jointly with, the OPEC countries.

NEPCO—New England Petroleum Corporation, one of the largest independent importers, refiners and distributors of petroleum products in the United States.

NEPCO has been LILCO's sole supplier of residual oil requirements since 1960, and a major supplier of CON EDISON since 1967. In 1967 SOCAL entered into a long term supply agreement with NEPCO whereby it agreed to supply NEPCO with substantially all of its share of AMOSEAS' output of low sulphur Libyan crude oil and to deliver it to a refinery in the Bahamas that would be owned 65% by NEPCO and 35% by SOCAL. This long term supply agreement induced LILCO and CON EDISON to enter into long term supply agreements for low sulphur oil with NEPCO, which extend to 1980. The effect of the SOCAL-NEPCO agreement was to make SOCAL's share of AMOSEAS low sulphur oil a major source of low sulphur oil for the East Coast of the United States. By September, 1973, when low sulphur fuel was in extremely short supply, the Libyan source became the only available supply.

However, in August, 1973 the government of Libya had demanded that NOC, its state-owned production company have a 51% interest in the oil companies' rights under their Libyan concession agreements. The Libyan demand became a matter of great concern to the London Policy Group (LPG). The LPG, it will be recalled, had been

founded in January, 1971 by the defendants and other oil companies to present a common front to OPEC. It was agreed that if an OPEC country nationalized one of LPG's member's interests, the other members would endeavor to make up the losses. This policy of concerted action was put to the test in the face of the Libyan demands. However, a split developed between those LPG members whose primary interests were in the Persian Gulf, the center of major production, and who held only secondary interests in Libya, (the "chiefs"), and those smaller independent companies whose primary interest was in the less substantial Libyan production. The smaller independents decided to acquiesce to the Libyan demands while the "chiefs" refused. The complaints allege in identical language:

> "SOCAL, TEXACO, MOBIL and other major LPG members received similar offers [as had the smaller independents] from the Government of Libya for a 51% participation by NOC in their Libyan interests. In their judgment, however, a grant of a 51% interest in their Libyan holdings would have jeopardized their far more vast and more valuable holdings in the Persian Gulf area, where they had succeeded in negotiating much more favorable agreements, including that with the Government of Saudi Arabia for a 25% participation in ARAMCO. Accordingly, SOCAL, TEXACO, MOBIL and other major LPG members concertedly decided to reject and did reject this proposal of the Libyan Government."
> (LILCO Complaint ¶ 31, Joint App. at 11a-12a; CONEDISON Complaint ¶ 30, Joint App. at 34a-35a).

The Libyan proposal having been rejected by the defendants, that government announced that it would nationalize a 51% interest. Thereupon, to summarize the allega-

tions of the complaint, the defendants organized a group boycott of Libyan oil, refusing to lift Libyan oil, or to transport it to the Bahamas refinery, and attempting to prevent NEPCO from obtaining it.

After the group boycott commenced NEPCO entered into negotiations with NOC for the purchase of the approximate quantity of low sulphur crude oil that SOCAL had previously been supplying, but at substantially higher prices and on less favorable terms. Since SOCAL had withdrawn its tankers pursuant to the alleged group boycott, NEPCO also had to make more costly transportation arrangements. NEPCO notified LILCO and CON EDISON that the replacement oil would be offered at substantially higher prices. LILCO and CON EDISON, unable to obtain low sulphur residual oil from other sources, agreed to purchase the NOC oil refined by NEPCO.[2]

The plaintiff utilities allege that by virtue of a fuel adjustment provision contained in their tariff schedules establishing rates for electric power a portion of these fuel price increases is passed on to their customers, but they also allege that they have incurred increased costs, substantial losses in business from present and potential subscribers to their electric services, and impairment of investor confidence resulting in increased cost of marketing their securities.

Thus, construing the complaint in the light most favorable to the plaintiffs, the first count charges that the defendants, motivated by their interest in strengthening their position in dealing with Saudi Arabia, organized a group boycott against Libyan oil in an effort to dissuade

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2 The district court took judicial notice that LILCO has pending in the New York Supreme Court, Nassau County, a suit against NEPCO for breach of contract for failure to deliver at prices within the range established in the long term supply contract.

the Libyan government from nationalizing 51% of their oil concessions; that pursuing the boycott of Libyan oil they stopped delivering it to NEPCO; that NEPCO obtained it directly from NOC at higher prices, and that LILCO and CON EDISON were forced to pay these higher prices.

The district court concluded that those allegations were insufficient to state a claim upon which relief could be granted under §§ 4 & 16 of the Clayton Act. It reached this conclusion for two reasons. First, it held that the allegations of the first count placed the plaintiffs outside the "target area" of defendants' alleged boycott, and hence without standing to bring a private antitrust action pursuant to the Clayton Act.[3] (Joint App. at 173a-74a). Second, it held that the first count did not sufficiently allege an injury to any interest of the plaintiffs protected by the antitrust laws, because there was no causal connection between the defendants' activities and the injuries alleged, and because these electric utilities, being natural monopolies, could not be injured in their competitive position in the electric utility business.[4] (Joint App. at 174a-75a). We affirm on the first ground because we conclude that under this circuit's cases on standing, LILCO and

3 *See Nassau County Ass'n of Ins. Agents, Inc.* v. *Aetna Life & Cas. Co.*, 497 F.2d 1151 (2d Cir.), *cert. denied*, 419 U.S. 968 (1974); *GAF Corp.* v. *Circle Floor Co., Inc.*, 463 F.2d 752 (2d Cir. 1972), *cert. dismissed*, 413 U.S. 901 (1973); *Calderone Enterprises Corp.* v. *United Artists Theatre Circuit, Inc.*, 454 F.2d 1292 (2d Cir. 1971), *cert. denied*, 406 U.S. 930 (1972); *Billy Baxter, Inc.* v. *Coca-Cola Co.*, 431 F.2d 183 (2d Cir. 1970); *cert. denied*, 401 U.S. 923 (1971); *SCM Corp.* v. *Radio Corp. of America*, 407 F.2d 166 (2d Cir.); *cert. denied*, 395 U.S. 943 (1969).

4 For the conclusion that a private plaintiff must allege injury to his competitive position, the district court relied on *GAF Corp.* v. *Circle Floor Co., Inc.*, 463 F.2d 752 (2d Cir. 1972). Our affirmance should not be construed as approving the district court's interpretation of the *GAF* holding, since on the basis on which we decide this case there is no occasion to reach that issue.

CON EDISON were not in the "target area" of the group boycott alleged in the first count.

Recognizing that any antitrust violation may produce ripple effects of injury quite far removed from the immediate target of the violation, this court in the cases listed in note 3 in the margin has held that some practical rules of standing must exclude remote parties with possibly speculative injuries. As the rather frequent dissents and concurrences in those cases indicate, the line between plaintiffs with standing and those who lack it may not in every case seem perfectly plain. But the "target area" standing rule is well-established. The policies which favor it are set forth in detail in Judge Mansfield's opinion in *Calderone Enterprises Corp.* v. *United Artists Theatre Circuit Inc.*, 454 F.2d 1292 (2d Cir. 1971), *cert. denied*, 406 U.S. 930 (1972), and need not be repeated here. Under the rule even parties whose injuries may be both immediate and foreseeable may lack standing to pursue a private remedy if that injury is indirect or incidental, or if their business was not in the target area of the allegedly illegal acts.

In this case the first count alleges a group boycott aimed primarily at Libya and secondarily at Saudi Arabia. It was foreseeable, certainly, that in the short run this boycott would have some effect, possibly adverse, on the business or property of NEPCO, and on the business and property of NEPCO's customers, LILCO and CON EDISON. But LILCO and CON EDISON were not the objects of the alleged antitrust violation. Their injuries were the result of their relationship to NEPCO, an intermediate non-target. The cases recognize that suppliers[5], stock-

5 *Billy Baxter, Inc.* v. *Coca-Cola Co.*, 431 F.2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923 (1971).

holders,[6] employees[7], landlords[8], franchisors[9], licensors[10], and consumers[11] are too remote for Clayton Act standing. The instant plaintiffs, customers of a non-target, are at least equally remote. The district court correctly held that LILCO and CON EDISON were too remote from the target area of the allegedly illegal group boycott for Clayton Act standing, and we affirm the dismissal of the first counts on that ground. Since that holding adequately supports the judgment appealed from, it is not necessary to pass upon the district court's alternative ground, or to consider the other defenses tendered by the defendants but not decided by the district court.[12]

LILCO and CON EDISON would have us surmount the standing hurdle by construing the first counts as if they alleged a group boycott directed at them. For this they rely upon the allegation:

> "After notification by NEPCO of its price increase, CON EDISON tried to obtain low sulphur residual oil from other sources. No major member of the LPG

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6 *Bookout* v. *Schine Theatres, Inc.*, 253 F.2d 292 (2d Cir. 1958).

7 *Westmoreland Asbestos Co.* v. *Johns-Mansville Corp.*, 113 F.2d 114 (2d Cir. 1940) (per curiam), *aff'g*, 30 F. Supp. 389, 391 (S.D. N.Y. 1939).

8 *Calderone Enterprises Corp.* v. *United Artists Theatre Circuit, Inc.*, 454 F.2d 1292 (2d Cir. 1971), *cert. denied*, 496 U.S. 930 (1972).

9 *Billy Baxter, Inc.* v. *Coca-Cola Co.*, 431 F.2d 183 (2d Cir. 1970), *cert. denied*, 401 U.S. 923 (1971).

10 *Productive Inventions, Inc.* v. *Trico Products Corp.*, 224 F.2d 678, 679 (2d Cir. 1955), *cert. denied*, 350 U.S. 936 (1956).

11 *United Egg Producers* v. *Bauer International Corp.*, 312 F. Supp. 319 (S.D. N.Y. 1970).

12 These include the contention that the price increase was the result of an act of state by Libya (See *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964)), and the contention that only the first purchaser from an antitrust violator may recover under the antitrust laws.

submitted an offer."[13] (CON EDISON Complaint ¶ 48; Joint App. at 39a).

However, this is not a group boycott allegation. It does not suggest that any defendant was actually asked for low sulphur residual oil, that any defendant actually refused to sell it, or that any action of the defendants with respect to the sale of low surphur residual oil to LILCO or CON EDISON was taken in concert. At no time did the plaintiffs seek leave in the district court to amend their complaints. Nor did they urge upon the district court the contention that the quoted allegation should be read as a charge of a group boycott directed at them. Under these circumstances we decline to consider that theory as a basis for reversing the judgment appealed from.

II. LILCO's Second Count

In disposing of the second count of the LILCO Complaint the district court stated:

> "The decision as to this [first count] claim will necessarily govern as to the second claim of the complaint in the LILCO action . . . ." (Joint App. at 166a).

Thus it made no separate analysis of LILCO's standing to plead the second count. Probably the court's ruling was the result of a somewhat equivocal colloquy which took place at the oral argument on the joint motions held on February 24, 1975. Several motions were pending in addition to the joint Rule 12(b)(6) motion which resulted in the order appealed from. The court asked if counsel had any objection to its consideration of the Rule 12(b)(6)

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13 The LILCO allegation is substantially identical. See LILCO Complaint ¶ 48, Joint App. at 16a. See p. 14 *infra*, Part II.

motion first, since it might moot the others. The judge was advised that there was no objection. The court next suggested that the argument be confined to the first count of the LILCO complaint, since

> "the decision on the points raised by the joint motion as to this first claim in the LILCO complaint will necessarily govern *as to the second claim in that same complaint* and as to the first claim in the Con Ed complaint." (Joint App. at 112a) (emphasis supplied).

Counsel for LILCO did not object.

The defendants would have us construe this colloquy as the equivalent of a stipulation by LILCO that the disposition of the first count would control the disposition of the second. Possibly the district court so understood it, although the opinion does not say as much. We think, however, that the record is entirely too equivocal to bind LILCO to a stipulation resulting from its counsel's silence when confronted during the argument of opposing counsel with a suggestion by the court, the full import of which may have escaped counsel's attention. Moreover, the court's statement was at least partially accurate, since the ruling on LILCO's first count would necessarily govern CON EDISON's first count. However, for reasons which we will discuss, the italicized language in the court's statement referring to the "second claim in [the LILCO] complaint" is inaccurate. We have not been referred to any record reference which establishes that LILCO's counsel in the heat of forensic battle in the courtroom was even aware of the significance of the court's misstatement. Thus we do not think LILCO is bound by counsel's acquiescence.

The defendants also urge, however, that the same ruling with respect to LILCO's standing must be made on the second count as well, and that we should therefore affirm

the dismissal of that count even though the district court made no separate analysis of it. There are, however, significant differences between the two counts. The second count repeats the jurisdictional, party, and damage allegations of the first count and also repeats the following allegation:

> "After notification by NEPCO of its price increase, LILCO tried to obtain low sulphur residual oil from other sources. No member of the LPG submitted an offer." (LILCO Complaint ¶ 48; Joint App. at 16a).

It then alleges:

> "Defendants SOCAL, TEXACO and MOBIL, acting individually and in concert with each other and with [others], have monopolized, have attempted to monopolize, and have conspired to monopolize the market in the East Coast of the United States for the production and sale of low sulphur crude oil and all products made therefrom . . . .
>
> • • • • •
>
> Defendants have used this monopoly power to limit the supply of petroleum products available to the consuming public and to fix and maintain the prices for these products at unreasonable and artificially high levels. Although defendants were aware of and knew that increasing environmental concern has led and will lead to the requirement that public utilities use only low sulphur distillate and residual oil in their plants, defendants have kept the supply of such petroleum products down and the price for such products up. They have accomplished this, in part, by choosing not to exploit deposits of low sulphur crude oil and by limiting the capacity to refine high sulphur crude oil into low sulphur petroleum products.

Exhibit A

> As a result of the foregoing conspiracy, acts and practices, LILCO has been damaged by having had to pay inflated, artificially high prices for its low sulphur distillate and residual oil requirements. LILCO has no present knowledge of the amount of overcharge that has resulted from such unlawful acts and practices. The facts regarding such overcharge are solely within the knowledge and control of defendants and their co-conspirators. After discovery of those facts, LILCO will amend this complaint to set forth its damages specifically." (LILCO Complaint ¶¶ 58, 61, 62; Joint App. at 19a-21a).

The second count, in marked contrast to the first, moves the target area of the alleged conspiracy from Saudia Arabia and Libya to the East Coast of the United States. It charges a conspiracy to reduce supply and inflate prices charged to electric utilities. Clearly LILCO is within the target area of such a conspiracy.

The defendants would have us hold that NEPCO, not LILCO, is the actual target, and that LILCO still lacks standing. But we are dealing here with a Rule 12(b)(6) motion. The second count does not allege the NEPCO-LILCO relationship. Moreover, it alleges that there are other unnamed conspirators. The first count alleges, and it is apparently undisputed, that SOCAL has a 35% interest in NEPCO's Bahamian refinery. If the conspiracy alleged in the second count actually exists, NEPCO may not be its victim, but rather a member. If that should prove to be the case nothing in the Supreme Court's decision in *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481 (1968) on which defendants rely, would preclude a § 4 Clayton recovery by NEPCO's customers.

The defendants also suggest that LILCO's second count may run afoul of the "pass through" defense since its fuel

charges are reflected in its rates. Whatever may be left of that defense since *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp., supra,*[14] the damage allegations pleaded here, including loss of customers, impairment of financial integrity, and increased cost of marketing its securities, cannot be said as a matter of law to fall within the pass through category.

We hold, then, that it was improper to grant a Rule 12(b)(6) motion dismissing the second count of the LILCO complaint. In so holding we do not suggest that the count may not be disposed of on a motion for summary judgment if its rather conclusory allegations should prove to be entirely groundless.

III. Conclusion

The judgment dismissing the first count of the CON EDISON complaint will be affirmed. The judgment dismissing the first count of the LILCO complaint will be affirmed. The judgment dismissing the second count of the LILCO complaint will be reversed and that count remanded to the district court for further proceedings.

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14 See cases collected in Annot., Liability in Damages for Price-Fixing in Violation of Federal Antitrust Laws as Affected by Plaintiff's Passing Excessive Charges onto His Own Customers, 1 A.L.R.Fed. 500 (1969).

460—8-25-75 . USCA—4147

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Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LONG ISLAND LIGHTING COMPANY, *Plaintiff,* —against— STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL OIL CORPORATION, CHEVRON OIL TRADING COMPANY AND TEXACO OVERSEAS PETROLEUM COMPANY, *Defendants.*	74 Civ. 2233
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., *Plaintiff,* —against— STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL OIL CORPORATION, CHEVRON OIL TRADING COMPANY AND TEXACO OVERSEAS PETROLEUM COMPANY, *Defendants.*	74 Civ. 2645

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Exhibit B

[390 F. Supp. 1173]

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Exhibit B

WYATT, District Judge,

This is a motion by all defendants to dismiss the first and second claims of the complaint in the first action (74 Civ. 2233) and the first claim of the complaint in the second action (74 Civ. 2645). Fed. R. Civ. P. 12(b)(6)

These are two separate civil actions, separately commenced. Plaintiff in the first action is Long Island Lighting Company (Lilco). Plaintiff in the second action is Consolidated Edison Company of New York (Con Ed). The five defendants in each action are the same. They are three major oil companies—Standard Oil Company of California (SOCal), Texaco, Inc. (Texaco), and Mobil Oil Corporation (Mobil)—and a subsidiary of SOCal and a subsidiary of Texaco. For simplicity, the two subsidiaries will be disregarded and included in any mention of SOCal and Texaco.

These two actions were consolidated by order filed August 23, 1974. In the federal courts, consolidation does not destroy the separate character of the actions. There may be consolidated discovery procedures and there may be a joint trial of the two actions but each action preserves its separate identity. *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 496-97 (1933); *Zdanok* v. *Glidden Co.*, 327 F. 2d 944, 950 n.6 (2d Cir. 1964); *McAlister* v. *Guterma*, 263 F. 2d 65, 68-69 (2d Cir. 1958); *Greenberg* v. *Giannini*, 140 F. 2d 550 (2d Cir. 1944) (L. Hand, C. J.); *Abrams* v. *Occidental Petroleum Corp.*, 44 F. R. D. 543, 547 (S. D. N. Y. 1968).

On the return day of this motion, there were also two other motions, one by SOCal and the other by Mobil. These two other motions were adjourned without date, to permit the present motion to be heard and decided first, before considering the other two motions.

Exhibit B

The present motion is directed to the complaint in each of the two actions. The questions raised, however, are the same since the complaints in respect of the claims involved are substantially the same. For simplicity, this opinion will consider only the first claim of the complaint in the Lilco action. The decision as to this claim will necessarily govern as to the second claim of the complaint in the Lilco action and as to the first claim of the complaint in the Con Ed action.

The memorandum for movants refers to a few matters outside the complaint, these apparently not the subject of dispute. Lilco, in opposing the three motions, has submitted extensive affidavits. This procedure was probably followed by counsel for Lilco because one set of papers has been submitted by them, opposing all three motions and on one at least of the other motions an affidavit was submitted by the movant. In any event, the decision of the present motion is based solely on the complaint. Affidavits have been excluded and not considered. Fed. R. Civ. P. 12(b)

The First Claim of the Complaint in the Lilco Action
(numbers in parentheses refer to paragraph numbers of the complaint)

The claim arises under Sections 1 and 2 of the Sherman Act (15 U. S. C. §§ 1, 2) and under Sections 4 and 16 of the Clayton Act (15 U. S. C. §§ 15, 26). Jurisdiction is laid under 28 U. S. C. § 1337 and appears to exist.

Lilco is an electric utility serving customers on Long Island (3). It needs each year about 7½ million barrels of low sulphur oil, out of an annual requirement of about 21 million barrels of oil of all types (24).

For some years, New Engand Petroleum Corporation (Nepco) has been the sole supplier of oil to Lilco (25).

Nepco is one of the largest "independent" importers, refiners, and distributors of oil (14).

[390 F. Supp. 1174]

SOCal and Texaco in the early 1960's found in Libya (a sovereign state) a "substantial quantity" of low sulphur crude oil. They produced this crude oil in Libya through a jointly owned corporation (Amoseas). SOCal made a long term agreement with Nepco under which SOCal agreed to supply Nepco with substantially all of the share of SOCal of the output of Amoseas in Libya. This crude oil was to be delivered by SOCal to a refinery in the Bahamas (Borco). Borco was owned 65% by Nepco and 35% by SOCal. The effect of the Nepco-SOCal agreement was to make Libya the major source of low sulphur oil for the East Coast of the United States. (10, 12, 27)

There is an agreement between Nepco and Lilco under which Nepco is obligated until March 31, 1980, to supply Lilco with all its requirements of low sulphur oil. The price to Lilco is determined by reference to a published cargo price per barrel, but the agreement "established certain maximum prices". (25, 26)

The general conclusory averment, meaningless except as supported by fact averments, is that defendants and others have conspired to and have monopolized trade in low sulphur oil to be imported into the East Coast of the United States. "A major objective of the conspiracy was and is to protect the monopoly interests of the defendants and others in the Persian Gulf area." No other objective of the conspiracy is averred. Specifically, there is no claim that injury to Lilco was an objective of the conspiracy. Indeed, there was no competition between Lilco and defendants nor did Lilco buy any oil from defendants. There is an averment that defendants knew that the carrying out of the conspiracy would "materially damage" Lilco. (22)

Exhibit B

The "Organization of Petroleum Exporting Countries" (OPEC) is made up of all major oil producing countries. The "London Policy Group" (LPG) is made up of most free world oil companies, including defendants, and was apparently formed to bargain with OPEC. (16, 28) There are a number of averments as to LPG activity but, while evidence as to this might be admissible if there were a trial, they seem to add nothing to the claims of activity by defendants themselves and for present purposes may be disregarded.

In 1972 defendants reached agreement with a number of Persian Gulf oil exporting countries, including an agreement whereby Saudi Arabia secured a 25% participation in a corporation (Aramco) theretofore owned entirely by defendants and another oil company. Aramco produces crude oil in Saudi Arabia. (11, 29)

In August 1973, a number of smaller oil companies made agreements with Libya under which 51% of the oil produced by them in Libya would belong to Libya, 49% would belong to the companies, and the companies had the right to buy from Libya most or all of its 51% of the oil. (30)

Libya offered the same agreement to defendants but they "concertedly" rejected this offer. The reason was that acceptance would have "jeopardized" the "more valuable holdings" of defendants in the Persian Gulf area. (31) Presumably the reasoning of defendants was that if they agreed with Libya on a 51% participation, then Saudi Arabia and the other Persian Gulf countries would want the same percentage or at least more than the 25% participation which had been negotiated.

The Libyan Government then nationalized a 51% interest in Amoseas, the producer in Libya jointly owned by SOCal and Texaco. (33)

SOCal then suspended all deliveries to Nepco of Libyan crude oil. (34) Nepco protested that this was a breach of contract but SOCal "stood firm", its motive being to protect the Persian Gulf interests. (35)

Nepco then made an agreement with Libya under which Nepco bought from Libya about the same amount of crude oil "that SOCal previously had been supplying". Libya, however, raised the

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price and Nepco was obliged to pay Libya "substantially higher prices" than it had been paying SOCal. (36; it seems clear that these "higher prices" demanded by Libya are the real and only root of any evil ultimately visited upon Lilco)

After Nepco had made its purchase agreement with Libya, the conspirator defendants attempted to prevent Nepco from buying oil from Libya or from hauling, refining and distributing it to Nepco customers, among which was Lilco. Their attempts included threats and the bringing of "groundless legal actions around the world". (37-45)

Nepco defeated all these attempts by defendants and was able to bring the oil from Libya. Nepco therefore "succeeded in . . . supplying its customers, including Lilco." (46)

Because Nepco was paying higher prices to Libya for low sulphur crude oil, Nepco demanded higher prices from Lilco for low sulphur residual oil (left after refining crude). The "price charged Lilco by Nepco for low sulphur residual oil continued to rise precipitously". (47) Lilco tried to get oil elsewhere but no oil company in the London Policy Group "submitted an offer". (48)

Lilco had to pay higher prices to Nepco for its oil requirements and this is the chief injury here alleged. (49) Other items of damage are also alleged. (50-56) As to the

damages from "fuel price increases", Lilco avers that "a portion" of such increases has been passed on by it to its electric customers and that, if Lilco recovers for these increases from defendants, refunds will be made to the customers to the extent the Public Service Commission approves. (55)

As noted before, Lilco had a contract with Nepco which contained price provisions and established maximum prices. Accordingly, Lilco commenced an action for breach of contract against Nepco (the complaint in the action against Nepco bears the same date as the complaint in the case at bar). The action against Nepco was brought in the New York Supreme Court, Nassau County. The complaint avers in substance that the increase by Nepco of its prices to Lilco was in breach of their contract. Damages of $62,000,000 are demanded. The averments of damage in the complaint against Nepco (paragraphs 15-22) are substantially the same as in the complaint at bar (paragraphs 49-54).

There is no averment in the complaint at bar about the commencement of the action against Nepco but, as was recognized at oral argument on this motion, judicial notice thereof may properly be taken since the pleadings in the action against Nepco are "public documents". *Zahn* v. *Transamerica Corp.*, 162 F. 2d 36, 48 fn. 20 (3d Cir. 1947); see also *Coman* v. *Coman*, 492 F. 2d 273, 276 fn. 5 (3d Cir. 1974); McCormick on Evidence (2d ed.) 766.

1.

Plaintiff is not a competitor of defendants nor has it ever bought any of their products. Plaintiff is a customer of a former customer of one of the defendants. This one defendant did at one time have business transactions with its customer Nepco, to which it sold oil; it had no such transactions with plaintiff.

Exhibit B

The complaint charges that violations of the antitrust laws by defendants caused injury to plaintiff. The nature of these violations is difficult to discover from the complaint; in this respect the complaint is most general and conclusory. For present purposes, however, it will be assumed that the complaint is sufficient to charge some kind of antitrust violations.

No anti-competitive conduct of defendants, however, was directed against plaintiff. Nothing of this sort is claimed by plaintiff; the most claimed is that defendants knew that plaintiff was a customer of Nepco, was a large user of oil, and could be injured by price increases, along with all other users of oil.

Whatever the motives of defendants, up to the nationalization by Libya in

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September 1973, nothing done by defendants could possibly have affected plaintiff. In this period, the conduct of which plaintiff complains is that defendants concertedly rejected the proposal of Libya for a 51% participation. Libya then took the 51% by force. The result was precisely the same as if defendants had done what the complaint suggests they should have done, namely, agree to give up the 51%.

After the nationalization by Libya, SOCal, in resisting the "takeover", refused to deliver crude oil to Nepco. If this was a wrong to Nepco under its contract with SOCal or otherwise, Nepco had its remedy against SOCal. Certainly the business decision by SOCal was no wrong to plaintiff, which bought no oil from SOCal.

After the nationalization by Libya, the real complaint of plaintiff is that Libya raised the price of oil. If plaintiff is able to recover from Nepco for breach of contract, then plaintiff has sustained no damage. If plaintiff is unable to recover from Nepco, plaintiff asks this Court to require

defendants to pay for the oil price increases of Libya. The benefit of these increases went all to Libya; defendants received no part of the increases.

2.

The case at bar appears to be ruled by *Calderone Enter. Corp.* v. *United Artists,* 454 F. 2d 1292 (2d Cir. 1971), cert. denied, 406 U. S. 930 (1972). This Court had dismissed antitrust claims on the face of the complaint (Fed. R. Civ. P. 12(b)(6)) because plaintiff had no standing to sue. The Court of Appeals affirmed, declaring it to be the law of this Circuit that

> ". . . in order to have 'standing' to sue for treble damages under § 4 of the Clayton Act, a person must be within the 'target area' of the alleged antitrust conspiracy, i.e., a person against whom the conspiracy was aimed, such as a competitor of the persons sued." (454 F. 2d at 1295)

The earlier decisions are collected in *Calderone.*

The complaint shows on its face that if there were a conspiracy to violate the antitrust laws the target was not plaintiff but Libya or the Persian Gulf states or all of them. Plaintiff has no standing to sue.

3.

Assuming that Lilco has standing to sue, the complaint shows that it has not been injured "by reason of" any antitrust violations (15 U. S. C. § 4).

The principle is that in a civil antitrust action the plaintiff "must establish a clear causal connection between the violation alleged and the injuries allegedly suffered". *Molinas* v. *National Basketball Ass'n,* 190 F. Supp. 241,

243 (S. D. N. Y. 1961 I. R. Kaufman, D. J.), quoted with approval in *Salerno* v. *American League,* 429 F. 2d 1003, 1004 (2d Cir. 1970), cert. denied, 400 U. S. 1001 (1971).

The complaint makes it clear that the cause of Lilco's injury (if any) was the increase by Nepco of its prices, an increase which Lilco says was an unjustified breach of contract and for which Lilco is suing. If Nepco's price increase was justified under the contract, then the justification was the increase by Libya of the purchase price to Nepco, an increase which was decided upon by Libya, a sovereign state over which defendants have no control. In any event, therefore, no "causal connection", either "clear" or otherwise, is shown between the claimed violations of defendants and the claimed injuries of Lilco.

The further principle is that damages in a civil antitrust action are allowed "only to those who have suffered some diminution of their ability to com-

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pete", that is to say, "the plaintiff must allege and prove that the illegal restraint of trade injured his *competitive position* in the business in which he is or was engaged". *GAF Corp.* v. *Circle Floor,* 463 F. 2d 752, 757, 758 (2d Cir. 1972; emphasis in original), cert. dismissed, 413 U. S. 901 (1973)

There is nothing in the complaint to show that Lilco suffered any competitive disadvantage. No such showing could be made since Lilco does not engage in competition, as its memorandum recognizes (p. 107). It is a regulated monopoly.

The claim that defendants had a monopoly and restrained trade relates to the Persian Gulf area, not to Libya. But there is no claim that anything done in the Persian Gulf area affected Lilco; on the contrary, the memorandum for Lilco seems to recognize that nothing done in the

Persian Gulf area had any effect on Lilco except to supply a motive for the alleged activity in Libya.

4.

The movants have further arguments based on the act of state doctrine (*Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398 (1964)) and based on the principle that only the first purchaser from an antitrust violator may recover underthe antitrust laws (*Donson Stores Inc.* v. *American Bakeries Co.*, 58 F. R. D. 481 (S. D. N. Y. 1973). In view of the conclusions reached, these arguments—while substantial—need not be considered.

The motion is granted. There is an express determination that there is no just reason for delay and an express direction (Fed. R. Civ. P. 54(b)) to the Clerk for the entry of separate judgments dismissing the first and second claims of the complaint in the first action (74 Civ. 2233) and the first claim of the complaint in the second action (74 Civ. 2645) for failure to state a claim upon which relief can be granted.

So Ordered.

Dated: New York, New York
February 27, 1975

Inzer B. Wyatt
Inzer B. Wyatt
United States District Judge

EXHIBIT C

United States District Court

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO.

LONG ISLAND LIGHTING COMPANY,

Plaintiff,

—against—

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL OIL CORPORATION, CHEVRON OIL TRADING COMPANY, TEXACO OVERSEAS PETROLEUM COMPANY and JOHN DOES 1 through 10,

Defendants.

COMPLAINT

Dated: New York, New York
May 22, 1974

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL
Attorneys for Plaintiff
575 Madison Avenue
New York, New York 10022
(212) 688-7800

Exhibit C

United States District Court

SOUTHERN DISTRICT OF NEW YORK

LONG ISLAND LIGHTING COMPANY,

Plaintiff,

—against—

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL OIL CORPORATION, CHEVRON OIL TRADING COMPANY, TEXACO OVERSEAS PETROLEUM COMPANY and JOHN DOES 1 THROUGH 10,

Defendants.

COMPLAINT

Plaintiff, Long Island Lighting Company (LILCO), by its attorneys Rosenman Colin Kaye Petschek Freund & Emil, for its complaint herein alleges as follows:

JURISDICTION AND VENUE

1. The FIRST and SECOND claims for relief of this complaint, directed against all defendants, are instituted pursuant to Sections 4 and 16 of the Act of Congress of October 15, 1914 (15 U. S. C. §§ 15 and 26 (1970)) commonly known as the Clayton Act, and arise under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. §§ 1 and 2 (1970)), commonly known as the Sherman Act. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. § 1337 (1970). Venue of the action in this Court is proper pursuant to the provisions

of 15 U. S. C. §§ 15 and 22 (1970). Defendants Standard Oil Company of California (SOCAL), Texaco Inc. (TEXACO), Mobil Oil Corporation (MOBIL), Chevron Oil Trading Company and Texaco Overseas Petroleum Company, are each doing business and are found in the Southern District of New York. The acts and practices hereinafter described occurred in and affect commerce among the States and between the United States and foreign nations.

2. Jurisdiction of the THIRD claim for relief brought by LILCO against SOCAL is founded upon diversity of citizenship under the provisions of 28 U. S. C. § 1332 (1970) and on principles of pendent jurisdiction. LILCO is a gas and electric corporation organized and existing under the laws of the State of New York, with its principal place of business at 250 Old Country Road, Mineola, New York. SOCAL is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at the Standard Oil Building, 225 Bush Street, San Francisco, California. The amount in controversy exceeds the sum of $10,000, exclusive of interest and costs.

THE PARTIES

3. At all times hereinafter mentioned, LILCO has been a domestic corporation, duly organized and existing under and by virtue of the Transportation Corporations Law of the State of New York, and has been a gas and electric corporation as defined in subdivisions 11 and 13 of Section 11 of the Public Service Law of the State of New York and as such, generates and distributes electricity for residential, commercial and industrial use in Nassau and Suffolk Counties and in part of Queens County. At all times hereinafter mentioned, LILCO, pursuant to the Public Service Law of the State of New York, has been

subject to the jurisdiction of the Public Service Commission of the State of New York as to practically all of its operations, but particularly with regard to the reasonableness of its rates and charges for providing electric service to its customers.

4. SOCAL is the fifth largest petroleum company and the tenth largest corporation in the United States, with assets in 1973 in excess of $9.0 billion. It reported revenue in 1973 of $8.9 billion and net income of $843.6 million. In the first quarter of 1974 it reported a net income of $293 million on revenue of $3.9 billion. SOCAL is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.

5. Chevron Oil Trading Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 30 Rockefeller Plaza, New York, New York. It is a wholly owned subsidiary of SOCAL. Hereinafter, unless otherwise stated, reference to SOCAL shall include reference to Chevron Oil Trading Company.

6. TEXACO is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 135 East 42nd Street, New York, New York. TEXACO is the second largest petroleum company and the third largest corporation in the United States, with assets in 1973 in excess of $13.5 billion. It reported revenue in 1973 of $11.4 billion and net income of $1.3 billion. In the first quarter of 1974, it reported net income of $589.4 million on revenues of $4.9 billion. TEXACO is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.

Exhibit C

7. Texaco Overseas Petroleum Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 380 Madison Avenue, New York, New York. It is a wholly owned subsidiary of TEXACO. Hereinafter, unless otherwise stated, reference to TEXACO shall include reference to Texaco Overseas Petroleum Company.

8. MOBIL is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 150 East 42nd Street, New York, New York. MOBIL is the third largest petroleum company and the seventh largest corporation in the United States, with assets in 1973 in excess of $10.6 billion. It reported revenue in 1973 of $12.8 billion and net income of $849.3 million. In the first quarter of 1974 it reported net income of $258.6 million on revenues of $4.4 billion. MOBIL is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.

9. JOHN DOES 1 through 10 are co-conspirators with SOCAL, TEXACO and MOBIL in the acts and practices hereinafter described, whose participation in those events is presently unknown to plaintiffs. As their identity and the nature and extent of their participation become known, this complaint will be amended and they will be added as parties to this action.

DEFINITIONS

10. AMOSEAS—American Overseas Petroleum Limited. AMOSEAS is a company engaged in crude oil drilling and producing in Libya. It is one of a series of companies jointly owned by SOCAL and TEXACO and known

as the "Caltex" group, which group constitutes an integrated organization for the exploration for, and production, transportation, refining and marketing of crude oil and products thereof, and is engaged in such operations in the Middle East, Far East, Africa and Australasia.

11. ARAMCO—Arabian-American Oil Company. ARAMCO is a company engaged in the exploration for and the production, refining and transportation of crude oil within Saudi Arabia, operating under a concession granted by the Government of Saudi Arabia. SOCAL, TEXACO and EXXON Corporation (formerly Standard Oil Company of New Jersey) each owned 30% of ARAMCO and MOBIL owned the remaining 10%. On December 20, 1972 the four partners reached agreement with the Government of Saudi Arabia whereby, effective January 1, 1973, the Government of Saudi Arabia became a 25% owner in ARAMCO and the interests of TEXACO, SOCAL and EXXON were reduced to 22½% each and the interest of MOBIL to 7½%.

12. BORCO—Bahama Oil Refining Company. BORCO is a Bahamian refining company owned 65% by New England Petroleum Corporation and 35% by SOCAL.

13. HOST COUNTRY is a country other than the United States in which an oil producing company operates.

14. NEPCO—New England Petroleum Corporation. NEPCO is a New York corporation with its principal place of business at 825 Third Avenue, New York, New York. NEPCO is one of the largest independent importers, refiners, and distributors of petroleum products in the United States, with revenues in 1973 of $600 million. NEPCO services accounts throughout the East Coast of the United States.

Exhibit C

15. NOC—Libyan National Oil Company. NOC is the Libyan government-owned oil corporation. It is engaged in the marketing of oil produced in Libya and belonging to the Government of Libya.

16. OPEC—Organization of Petroleum Exporting Countries. OPEC is an organization of certain Asian, African and Latin American countries, which account for the bulk of the known crude oil reserves in the world. OPEC includes all major Persian Gulf and North African crude oil producing countries, including Libya and Saudi Arabia.

17. PERSIAN GULF area is the geographic area including and surrounding the Persian Gulf. Countries in the area include: Iran, Iraq, Kuwait, Saudi Arabia, Qatar, Bahrain, United Arab Emirates and Oman.

18. CRUDE OIL is unrefined oil. In its crude state oil can contain various percentages of sulphur.

19. DISTILLATE OIL (No. 2) is a product of crude oil refined in such a way as to be suitable for use as a home heating oil. Utilities, including LILCO, use distillate oil for firing relatively small, peak-load gas turbine electric generating units.

20. RESIDUAL OIL (No. 6) is that portion of the crude oil that remains after completion of the refining process, during which various petroleum products are extracted from the crude oil. Residual oil is used by utilities, including LILCO, as fuel in steam turbine electric generating units, which are the large, primary generating units which account for the greatest part of oil burned by utilities.

Exhibit C

21. LOW SULPHUR, as used in this complaint, describes crude, distillate or residual oil with sulphur content of 0.3% or less.

FIRST CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

22. Beginning on or before January, 1971, and during all times thereafter, the named defendants and JOHN DOES 1 through 10 have combined and conspired unlawfully to restrain and monopolize trade and commerce, and have in fact unlawfully restrained and monopolized trade and commerce, in low sulphur oil to be imported into the East Coast of the United States. A major objective of the conspiracy was and is to protect the monopoly interests of the defendants and others in the Persian Gulf area. To carry out the conspiracy and to achieve their objectives, the defendants agreed to implement and did implement a campaign and plan of action hereinafter set forth, with full knowledge that the implementation of said plan would materially damage LILCO and jeopardize the supply of electricity to consumers on the East Coast of the United States.

23. Defendants aggressively and coercively carried out such campaign and plan of action by means of the measures hereinafter set forth, among others. All such acts and practices were intended by defendants to be, and were in fact, in furtherance of the aforesaid conspiracy and have had the effect of substantially restraining trade and preventing competition in the importation of low sulphur oil into the East Coast of the United States.

24. LILCO is the sole supplier of electric power to consumers in most of Nassau and Suffolk Counties and the

Rockaway Peninsula section of Queens County in the State of New York. Under applicable environmental regulations, LILCO is required to burn only low sulphur residual and distillate oil in its plants in Queens and Nassau Counties. In its Suffolk County plants LILCO is also required to use certain amounts of low sulphur oil. At the present time, approximately 36% of LILCO's residual and distillate oil requirements (or approximately 7.5 million barrels of a yearly requirement of 21.0 million barrels) are for low sulphur oil. LILCO first began burning low sulphur oil in October, 1969.

25. Since 1960 NEPCO has been LILCO's sole supplier of its residual oil requirements. The agreement currently in force between NEPCO and LILCO extends through a term ending March 31, 1980 and specifically obligates NEPCO to supply all of LILCO's low sulphur residual oil requirements up to a yearly maximum of 30 million barrels. LILCO was induced to enter into that agreement by the express representation of SOCAL's officers to LILCO's officers that SOCAL, NEPCO's primary supplier of low sulphur crude oil, would guarantee an adequate supply of such crude oil for the duration of the agreement. The existence of the agreement was common knowledge in the petroleum industry.

26. Under this agreement, the price LILCO paid NEPCO for the various grades of residual oil supplied by NEPCO was to be determined by reference to the New York Harbor Cargo price per barrel as published by Humble Oil and Refining Company, a subsidiary of EXXON, a partner of SOCAL, TEXACO and MOBIL in ARAMCO. The agreement further established certain maximum prices for the products to be supplied. Payments under the agreement were to be made 30 days after the presen-

tation of an invoice and a certificate of quantity and quality prepared by NEPCO with respect to each sale.

27. As of August, 1973, SOCAL was NEPCO's primary supplier of low sulphur crude oil. In the early 1960's SOCAL and TEXACO—operating through AMOSEAS —had found a substantial quantity of low sulphur crude oil in Libya. In 1967, NEPCO entered into a long-term agreement with SOCAL under which SOCAL agreed to supply NEPCO with substantially all of SOCAL's share of AMOSEAS' output, to be delivered by SOCAL to the BORCO refinery. As part of the agreement, SOCAL received a 35% interest in the BORCO refinery and consented to guaranty a loan taken by NEPCO, which guaranty provided that in the event of a default by NEPCO in repayment of the loan, NEPCO's 65% interest in the BORCO refinery would pass to SOCAL. The effect of this agreement was to make Libya the major source of supply of low sulphur oil for the East Coast of the United States and, as the situation existed in August, 1973, if that supply were to be interrupted, there would be substantial brownouts or blackouts in the East Coast of the United States.

28. In January, 1971, SOCAL, TEXACO, MOBIL and most other free world oil companies with interests in OPEC countries, formed a committee known as the London Policy Group (LPG) to plan policy with respect to and to bargain jointly with the OPEC countries, including Libya. The members of LPG agreed, among other things: (a) that no member of LPG would reach any agreement with an OPEC country without the consent of all LPG members and (b) that if an OPEC country took any action against any LPG member, *e.g.*, nationalization of all or part of its oil reserves in that country, the other members of LPG

would supply oil to that company, at cost, to the extent of its losses resulting from that action.

29. Negotiations with OPEC countries were carried out jointly by LPG members from the time of LPG's formation until early 1972, when the LPG members whose primary interests were in the Persian Gulf (consisting of SOCAL, TEXACO, MOBIL and the other major petroleum companies, known within LPG as the "chiefs") in effect split from the LPG members whose primary interests were in Libya (mostly the smaller "independent" petroleum companies). Thereafter, in an effort to protect their monopoly interests in the Persian Gulf area, a number of the major petroleum company members of LPG reached agreement with a number of the Persian Gulf host countries. Specifically, SOCAL, TEXACO, MOBIL and EXXON negotiated an agreement with the Government of Saudi Arabia whereby the Government acquired a 25% participation in ARAMCO.

30. In August, 1973, a number of the smaller "independent" petroleum companies, which were operating in Libya and which had only insignificant holdings in the Persian Gulf area, reached an agreement with the Government of Libya. Under this agreement, 51% of all crude oil produced by those companies would belong to NOC and 49% of the crude oil produced would belong to the companies. The companies would have the right to buy back from NOC most or all of the remaining 51%. Although these smaller companies were LPG members, the LPG did not approve such agreement.

31. SOCAL, TEXACO, MOBIL and other major LPG members received similar offers from the Government of Libya for a 51% participation by NOC in their Libyan interests. In their judgment, however, a grant of

a 51% interest in their Libyan holdings would have jeopardized their far more vast and more valuable holdings in the Persian Gulf area, where they had succeeded in negotiating much more favorable agreements, including that with the Government of Saudi Arabia for a 25% participation in ARAMCO. Accordingly, SOCAL, TEXACO, MOBIL and other major LPG members concertedly decided to reject and did reject this proposal of the Libyan Government.

32. In August, 1973, NEPCO learned that its Libyan source of supply was threatened by these events. Therefore, in an effort to protect itself and to insure adequate oil supplies for its customers and the East Coast of the United States, NEPCO proposed to SOCAL that NEPCO purchase either SOCAL's 50% interest in AMOSEAS or all of AMOSEAS. SOCAL rejected NEPCO's offer for the reasons stated in paragraph 31, *supra.*

33. On September 1, 1973, Libya announced that it would nationalize a 51% interest of all companies in Libya that had not previously accepted the 51% participation, including AMOSEAS, other Libyan interests of SOCAL and TEXACO, and the Libyan interests of MOBIL.

34. On September 10, 1973, SOCAL informed NEPCO that the Libyan Government had seized 51% of SOCAL's interest in AMOSEAS, that SOCAL was resisting this takeover, and that as of September 1, 1973, all deliveries of Libyan crude oil by SOCAL were suspended.

35. NEPCO immediately replied, stating that SOCAL's position would violate SOCAL's contractual obligations to NEPCO and reminding SOCAL that 49% of the AMOSEAS-produced crude oil still belonged to SOCAL and TEXACO and that most of the remaining 51% was being offered to SOCAL and TEXACO by NOC

on a buy-back arrangement. SOCAL stood firm and refused to honor its contractual commitment. Not only did SOCAL refuse to deliver to NEPCO any Libyan crude oil, it also refused to provide any replacement oil from its other sources. At the same time, SOCAL withdrew its tankers which, under its agreement with NEPCO, were used to carry the Libyan oil from Libya to the BORCO refinery in the Bahamas. These actions, taken in accord with agreements made among certain LPG members, were designed to protect SOCAL's and TEXACO's interests in the Persian Gulf, including their interests in ARAMCO.

36. Upon the invitation of the Government of Libya, NEPCO opened negotiations with NOC for possible direct purchase from NOC of part of NOC's 51% share of AMOSEAS-produced crude oil. Following SOCAL's announced boycott of NEPCO and its refusal to honor its contract with NEPCO, NEPCO entered into an agreement with NOC for purchase in Libya of the approximate quantity of low sulphur crude oil that SOCAL previously had been supplying. NEPCO's agreement with NOC, however, was at substantially higher prices per barrel and on distinctly less favorable terms. In addition, since SOCAL had withdrawn its tankers, NEPCO had to arrange for and bear the greatly increased cost of transporting the oil from Libya to the BORCO refinery.

37. Thereafter, pursuant to an unlawful conspiracy whose object was to protect their monopoly interest in and virtually complete control over all aspects of the production, transportation, refining and marketing of crude oil in the Persian Gulf area, SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, embarked on a course of action designed to prevent NEPCO from dealing with the Libyan Government, from purchasing low sulphur crude oil from

NOC, from transporting such low sulphur crude oil, from refining it and from distributing it to its customers, including LILCO.

38. On or about September 13, 1973, R. G. Weinand, Executive Vice President of NEPCO, received a telephone call from L. W. Folmar, a Vice President of TEXACO and Chairman of the Board of Directors of Texaco Overseas Petroleum Company. Mr. Folmar informed Mr. Weinand that he had heard the NEPCO had put a ship into Libya to lift oil which had been taken from AMOSEAS, that this oil still belonged to TEXACO, and that if NEPCO lifted this oil, TEXACO would pursue all means to prevent its use by NEPCO.

39. Minutes later, D. L. DeBaun, a Vice President of NEPCO received a telephone call from H. A. Navis, a Vice President of SOCAL and an officer of Chevron Oil Trading Company. Using almost the same words as Mr. Folmar, Mr. Navis warned NEPCO not to take any oil from NOC and threatened action to prevent NEPCO from making use of any Libyan oil.

40. On the same day, both TEXACO and SOCAL sent letters to NEPCO restating their position, insisting that the Libyan oil was theirs, and threatening action if NEPCO actually lifted the oil.

41. In spite of the threats by SOCAL and TEXACO, NEPCO did lift the oil which it had purchased from NOC. It was loaded at the instruction of NOC at a terminal in Libya operated by a subsidiary of MOBIL.

42. Thereafter, and pursuant to the conspiracy, SOCAL, TEXACO and MOBIL decided to and did institute

a series of groundless legal actions around the world in an effort to harass NEPCO and to prevent NEPCO from transporting and refining the Libyan oil it had purchased from NOC and from distributing it to its customers, including LILCO.

43. A subsidiary of SOCAL and a subsidiary of TEXACO brought an action in Italy against an Italian refinery which had in its possession certain oil belonging to NEPCO. Although claiming in this action that this "hot oil" was rightfully "its oil", at no time would SOCAL agree to deliver the oil either to NEPCO, as it was obligated to do under its supply agreement with NEPCO, or to any of NEPCO's East Coast customers, including LILCO.

44. MOBIL, a SOCAL and TEXACO partner in ARAMCO but not in AMOSEAS, then brought an action in the Bahamas against a Bahamian subsidiary of NEPCO alleging that the oil NEPCO had purchased from NOC rightfully belonged to MOBIL, notwithstanding the fact that MOBIL did not produce that type of oil in Libya.

45. Concurrently, a third action was brought in the Bahamas by TEXACO against a subsidiary of NEPCO trying to prevent NEPCO from using the oil bought from NOC and lifted in Libya.

46. Despite the efforts of SOCAL, TEXACO and MOBIL, NEPCO succeeded in bring the Libyan oil into the United States and supplying its customers, including LILCO. However, as a result of the actions of SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10,

the cost per barrel of low sulphur crude oil immediately rose from a pre-September 1, 1973, price of $3.60 per barrel delivered to the BORCO refinery in the Bahamas to about $6.80 per barrel, an increase of almost 90%. Thereafter, and as a result of the conspiracy, the price of low sulphur crude oil continued to rise precipitiously.

47. This increase in the direct cost per barrel of low sulphur crude oil and the increase in indirect costs to NEPCO resulting from the foregoing acts by SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, led NEPCO to seek to increase the price that NEPCO charged LILCO for low sulphur residual oil. Two days after SOCAL had announced its intention not to deliver Libyan crude oil to NEPCO, NEPCO informed LILCO that replacement oil, to the extent available, would henceforth be offered at a price increase of $3.20 per barrel of low sulphur residual oil on terms of immediate payment. Thereafter, and as a result of the conspiracy, the price charged LILCO by NEPCO for low sulphur residual oil continued to rise precipitously.

48. After notification by NEPCO of its price increase, LILCO tried to obtain low sulphur residual oil from other sources. No member of the LPG submitted an offer.

49. As a result of the foregoing conspiracy, acts and practices, in the period from September 1, 1973 to date, LILCO has suffered substantial damages in the form of greatly increased costs for its low sulphur residual oil requirements. Such damages are continuing.

50. In addition, as a result of the foregoing conspiracy, acts and practices, NEPCO has demanded that LILCO pay

NEPCO on delivery instead of on 30-day terms as provided in the agreement between LILCO and NEPCO. In the period from September 1, 1973 to date, this has resulted in substantially increased interest costs to LILCO. Such damages are continuing.

51. As a result of the foregoing conspiracy, acts and practices, in the period from September 1, 1973 to date, LILCO has been impaired in its ability to conduct normal transactions within the New York Power Pool and within other regional and inter-regional pools and organizations and has lost substantial revenues therefrom. Such damages are continuing.

52. As a result of the foregoing conspiracy, acts and practices, and the threatened loss of its supplies of residual oil, LILCO has thus far had to expend substantial amounts to prepare for conversion of a portion of its oil burning capability to a coal burning capability and LILCO will have to continue to expend substantial sums.

53. As a result of its increased costs resulting from the foregoing conspiracy, acts and practices, LILCO has suffered substantial losses in business from its present consumers and lost present and potential subscribers to several of its electric services. Such damages are continuing.

54. Finally, as a result of the foregoing conspiracy, acts and practices, LILCO has lost good will in its service area and among its customers. In addition, the confidence of the financial community in LILCO has diminished, making investors reluctant to accept LILCO's securities and thus increasing the cost to LILCO of marketing such securi-

ties and of obtaining other forms of financing necessary for LILCO to maintain its financial integrity. LILCO has suffered substantial damages as a result. Such damages are continuing

55. By virtue of an electric fuel adjustment provision contained in the rate schedule of LILCO and approved by the Public Service Commission of the State of New York, a portion of the fuel price increases referred to in paragraph 49, *supra*, has been borne by LILCO's electric customers. In the event LILCO recovers damages for such increases, such recovery will be refunded to said electric customers in a manner and to the extent approved by the New York Public Service Commission.

56. Unless SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10 are enjoined from continuing in the illegal and conspiratorial acts and practices described above, LILCO will continue to suffer damages in the form of increased costs, it will continue to bear the risk of possible brownouts or blackouts of its service area due to unavailability of low sulphur residual oil and it will continue to experience erosion of its financial integrity and its ability to obtain financing sufficient to enable it to continue to provide adequate service to the public. It is and will be virtually impossible to ascertain or measure in damages the extent and nature of the injury that will be inflicted upon LILCO and its services as a result of the foregoing, an injury for which LILCO has and will have no adequate remedy at law.

Exhibit C

SECOND CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

57. LILCO repeats and realleges the averments of paragraphs 1, 3 to 48 and 54 to 56 of this complaint.

58. Defendants SOCAL, TEXACO and MOBIL, acting individually and in concert with each other and with JOHN DOES 1 through 10, have monopolized, have attempted to monopolize, and have conspired to monopolize the market in the East Coast of the United States for the production and sale of low sulphur crude oil and all products made therefrom. In furtherance thereof defendants have:

(a) pursued a common course of action designed to secure for themselves and exclude others from access to and ownership of the major sources of supply of crude oil, including low sulphur crude oil;

(b) pursued a common course of action designed to exploit and monopolize among themselves the means of gathering and transporting such crude oil to refineries;

(c) pursued a common course of action designed to retain control among themselves of refinery capacity with the object of limiting the supply and controlling the price of all types of refined petroleum products, including low sulphur distillate and residual oil;

(d) pursued a common course of action designed to maintain control among themselves over the distribution and sale and marketing of all types of refined petroleum products, including low sulphur distillate and residual oil.

Exhibit C

59. By means of the foregoing conspiracy, acts and practices, defendants have attempted to achieve and have achieved a monopoly over all phases of the petroleum industry from the exploration for and production of crude oil to the transportation, refining and marketing of crude oil and all petroleum products, including low sulphur distillate and residual oil.

60. In 1972, SOCAL, TEXACO and MOBIL in concert with EXXON, GULF OIL CORPORATION, BRITISH PETROLEUM COMPANY LIMITED and the ROYAL DUTCH SHELL GROUP, the seven major members of LPG and the petroleum industry, individually and through joint ventures and consortia among themselves, controlled 64.2% of crude oil production in the free world. They accounted for 77.1% of all OPEC production, 77.6% of production in the Persian Gulf area and Libya, and approximately 80% of Persian Gulf production.

61. Defendants have used this monopoly power to limit the supply of petroleum products available to the consuming public and to fix and maintain the prices for these products at unreasonable and artificially high levels. Although defendants were aware of and knew that increasing environmental concern has led and will lead to the requirement that public utilities use only low sulphur distillate and residual oil in their plants, defendants have kept the supply of such petroleum products down and the price for such products up. They have accomplished this, in part, by choosing not to exploit deposits of low sulphur crude oil and by limiting the capacity to refine high sulphur crude oil into low sulphur petroleum products.

62. As a result of the foregoing conspiracy, acts and practices, LILCO has been damaged by having had to pay inflated, artificially high prices for its low sulphur distillate and residual oil requirements. LILCO has no present knowledge of the amount of overcharge that has resulted from such unlawful acts and practices. The facts regarding such overcharge are solely within the knowledge and control of defendants and their co-conspirators. After discovery of those facts, LILCO will amend this complaint to set forth its damages specifically.

THIRD CLAIM FOR RELIEF AGAINST SOCAL

63. LILCO repeats and realleges the allegations of paragraphs 1 through 4 and 10 through 56 of this complaint.

64. SOCAL has deliberately refused to supply NEPCO with low sulphur crude oil since September 1, 1973. It has done so intentionally and with knowledge of NEPCO's obligation to LILCO under NEPCO's supply agreement with LILCO. SOCAL did so knowing that unless it met its obligations to NEPCO, NEPCO would be unable to meet LILCO's low sulphur residual oil requirements and that if LILCO were able to secure such low sulphur residual oil, it would be able to do so only at greatly increased cost. By wrongfully, maliciously and wilfully refusing to supply NEPCO with low sulphur crude oil, SOCAL intentionally caused NEPCO to breach its agreement with LILCO and has caused and is causing LILCO damages as set forth in paragraphs 49 through 56, *supra*.

BLEED THROUGH

Exhibit C

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

A. That this Court order, adjudge and decree that defendants have violated Sections 1 and 2 of the Sherman Act as alleged in the FIRST and SECOND claims for relief;

B. That with respect to the FIRST claim for relief, LILCO be awarded judgment for $186,000,000 or three times the damages of $62,000,000 presently known to LILCO, plus three times such other and further damages that LILCO has sustained and will sustain in the future as a result of defendants' unlawful acts and practices, plus the costs of this action including reasonable attorneys' fees;

C. That with respect to the SECOND claim for relief, LILCO shall be awarded judgment for three times the damages it has sustained and will sustain in the future as a result of defendants' unlawful acts and practices, plus the costs of this action including reasonable attorneys' fees;

D. That with respect to the FIRST claim for relief, defendants and each of them, and their subsidiaries and affiliates, be enjoined and restrained from combining, conspiring, obstructing or in any way interfering with or attempting to interfere with the ability of NEPCO and others in purchasing, lifting, transporting, refining and distributing Libyan crude oil;

E. That with respect to the SECOND claim for relief, defendants and each of them and their subsidiaries and affiliates be enjoined and restrained from combining and conspiring or attempting in any way to

control the supply and price of low sulphur crude, distillate and residual oil and from monopolizing or attempting to monopolize the world-wide market for low sulphur crude, distillate and residual oil;

F. That this Court order, adjudge and decree with respect to the THIRD claim for relief, that SOCAL intentionally and wrongfully caused NEPCO to breach its agreement with LILCO and LILCO shall be awarded judgment for $62,000,000 plus such other and further damages that LILCO has sustained and will sustain in the future as a result of SOCAL's wrongful acts, and punitive damages of an additional $62,000,000 plus the costs of this action;

G. That the Court grant such other relief as may be appropriate.

Dated: New York, New York
May 22, 1974.

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By /s/ ASA D. SOKOLOW
ASA D. SOKOLOW
575 Madison Avenue
New York, New York 10022
(212) 688-7800

DEMAND FOR JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure plaintiff demands a trial by jury.

BLEED THROUGH

EXHIBIT D

United States District Court

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Plaintiff,

—against—

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL OIL CORPORATION, CHEVRON OIL TRADING COMPANY, TEXACO OVERSEAS PETROLEUM COMPANY and JOHN DOES 1 through 10,

Defendants.

COMPLAINT

Dated: New York, New York
June 20, 1974

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL
Attorneys for Plaintiff
575 Madison Avenue
New York, New York 10022
(212) 688-7800

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Exhibit D

United States District Court

SOUTHERN DISTRICT OF NEW YORK

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
Plaintiff,

—against—

STANDARD OIL COMPANY OF CALIFORNIA, TEXACO INC., MOBIL OIL CORPORATION, CHEVRON OIL TRADING COMPANY, TEXACO OVERSEAS PETROLEUM COMPANY and JOHN DOES 1 THROUGH 10,

Defendants.

COMPLAINT

Plaintiff, Consolidated Edison Company of New York, Inc. (CON EDISON), by its attorneys Rosenman Colin Kaye Petschek Freund & Emil, for its complaint herein alleges as follows:

JURISDICTION AND VENUE

1. The FIRST claim for relief of this complaint, directed against all defendants, is instituted pursuant to Sections 4 and 16 of the Act of Congress of October 15, 1914 (15 U. S. C. §§ 15 and 26 (1970)) commonly known as the Clayton Act, and arises under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. §§ 1 and 2 (1970)), commonly known as the Sherman Act. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. § 1337 (1970). Venue of the action in this Court is proper pursuant to the provisions of 15 U. S. C. §§ 15 and 22 (1970). Defendants Standard

Oil Company of California (SOCAL), Texaco Inc. (TEXACO), Mobil Oil Corporation (MOBIL), Chevron Oil Trading Company and Texaco Overseas Petroleum Company, are each doing business and are found in the Southern District of New York. The acts and practices hereinafter described occurred in and affect commerce among the States and between the United States and foreign nations.

2. Jurisdiction of the SECOND claim for relief brought by CON EDISON against SOCAL is founded upon diversity of citizenship under the provisions of 28 U. S. C. § 1332 (1970) and on principles of pendent jurisdiction. CON EDISON is a gas, electric and steam corporation organized and existing under the laws of the State of New York, with its principal place of business at 4 Irving Place, New York, New York. SOCAL is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at the Standard Oil Building, 225 Bush Street, San Francisco, California. The amount in controversy exceeds the sum of $10,000, exclusive of interest and costs.

THE PARTIES

3. At all times hereinafter mentioned, CON EDISON has been a domestic corporation, duly organized and existing under and by virtue of the Transportation Corporations Law of the State of New York, and has been a gas, electric and steam corporation as defined in subdivisions 11, 13 and 22 of Section 2 of the Public Service Law of the State of New York and as such, generates and distributes electricity and steam for residential, commercial and industrial use in New York City in the Boroughs of Manhattan, Brooklyn, Bronx and Staten Island and in parts of the Borough of Queens and the County of Westchester. CON EDISON also generates and distributes steam for space heating and

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cooling in the Borough of Manhattan. At all times hereinafter mentioned, CON EDISON, pursuant to the Public Service Law of the State of New York, has been subject to the jurisdiction of the Public Service Commission of the State of New York as to practically all of its operations, but particularly with regard to the reasonableness of its rates and charges for providing electric and steam service to its customers.

4. SOCAL is the fifth largest petroleum company and the tenth largest corporation in the United States, with assets in 1973 in excess of $9.0 billion. It reported revenue in 1973 of $8.9 billion and net income of $843.6 million. In the first quarter of 1974 it reported a net income of $293 million on revenue of $3.9 billion. SOCAL is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.

5. Chevron Oil Trading Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 30 Rockefeller Plaza, New York, New York. It is a wholly owned subsidiary of SOCAL. Hereinafter, unless otherwise stated, reference to SOCAL shall include reference to Chevron Oil Trading Company.

6. TEXACO is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 135 East 42nd Street, New York, New York. TEXACO is the second largest petroleum company and the third largest corporation in the United States, with assets in 1973 in excess of $13.5 billion. It reported revenue in 1973 of $11.8 billion and net income of $1.3 billion. In the first quarter of 1974, it reported net income of $589.4 million on revenues of $4.9 billion. TEXACO is engaged on a world-wide basis in the exploration for, and produc-

tion, transportation, refining, distribution and marketing of petroleum and petroleum products.

7. Texaco Overseas Petroleum Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 135 East 42nd Street, New York, New York. It is a wholly owned subsidiary of TEXACO. Hereinafter, unless otherwise stated, reference to TEXACO shall include reference to Texaco Overseas Petroleum Company.

8. MOBIL is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 150 East 42nd Street, New York, New York. MOBIL is the third largest petroleum company and the seventh largest corporation in the United States, with assets in 1973 in excess of $10.6 billion. It reported revenue in 1973 of $12.8 billion and net income of $849.3 million. In the first quarter of 1974 it reported net income of $258.6 million on revenues of $4.4 billion. MOBIL is engaged on a world-wide basis in the exploration for, and production, transportation, refining, distribution and marketing of petroleum and petroleum products.

9. JOHN DOES 1 through 10 are co-conspirators with SOCAL, TEXACO and MOBIL in the acts and practices hereinafter described, whose participation in those events is presently unknown to plaintiffs. As their identity and the nature and extent of their participation become known, this complaint will be amended and they will be added as parties to this action.

DEFINITIONS

10. AMOSEAS—American Overseas Petroleum Limited. AMOSEAS is a company engaged in crude oil drilling and producing in Libya. It is one of a series of companies jointly owned by SOCAL and TEXACO and known

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as the "Caltex" group, which group constitutes an integrated organization for the exploration for, and production, transportation, refining and marketing of crude oil and products thereof, and is engaged in such operations in the Middle East, Far East, Africa and Australasia.

11. ARAMCO—Arabian-American Oil Company. ARAMCO is a company engaged in the exploration for and the production, refining and transportation of crude oil within Saudi Arabia, operating under a concession granted by the Government of Saudi Arabia. SOCAL, TEXACO and EXXON Corporation (formerly Standard Oil Company of New Jersey) each owned 30% of ARAMCO and MOBIL owned the remaining 10%. On December 20, 1972 the four partners reached agreement with the Government of Saudi Arabia whereby, effective January 1, 1973, the Government of Saudi Arabia became a 25% owner in ARAMCO and the interests of TEXACO, SOCAL and EXXON were reduced to 22½% each and the interest of MOBIL to 7½%.

12. BORCO—Bahamas Oil Refining Company. BORCO is a Bahamian refining company owned 65% by New England Petroleum Corporation and 35% by SOCAL.

13. HOST COUNTRY is a country other than the United States in which an oil producing company operates.

14. NEPCO—New England Petroleum Corporation. NEPCO is a New York corporation with its principal place of business at 825 Third Avenue, New York, New York. NEPCO is one of the largest independent importers, refiners, and distributors of petroleum products in the United States, with revenues in 1973 of $600 million. NEPCO services accounts throughout the East Coast of the United States.

Exhibit D

15. NOC—Libyan National Oil Company. NOC is the Libyan government-owned oil corporation. It is engaged in the marketing of oil produced in Libya and belonging to the Government of Libya.

16. OPEC—Organization of Petroleum Exporting Countries. OPEC is an organization of certain Asian, African and Latin American countries, which account for the bulk of the known crude oil reserves in the world. OPEC includes all major Persian Gulf and North African crude oil producing countries, including Libya and Saudi Arabia.

17. PERSIAN GULF area is the geographic area including and surrounding the Persian Gulf. Countries in the area include: Iran, Iraq, Kuwait, Saudi Arabia, Qatar, Bahrain, United Arab Emirates and Oman.

18. CRUDE OIL is unrefined oil. In its crude state oil can contain various percentages of sulphur.

19. RESIDUAL OIL (No. 6) is that portion of the crude oil that remains after completion of the refining process, during which various petroleum products are extracted from the crude oil. Residual oil is used by utilities, including CON EDISON, as fuel in steam turbine electric generating units, which are the large, primary generating units which consume the greatest part of oil burned by utilities. CON EDISON also uses residual oil as fuel in the plants in which it generates steam for sale as steam.

20. LOW SULPHUR, as used in this complaint, describes crude or residual oil with sulphur content of 0.3% or less.

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Exhibit D

FIRST CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS

21. Beginning on or before January, 1971, and during all times thereafter, the named defendants and JOHN DOES 1 through 10 have combined and conspired unlawfully to restrain and monopolize trade and commerce, and have in fact unlawfully restrained and monopolized trade and commerce, in low sulphur oil to be imported into the East Coast of the United States. A major objective of the conspiracy was and is to protect the monopoly interests of the defendants and others in the Persian Gulf area. To carry out the conspiracy and to achieve their objectives, the defendants agreed to implement and did implement a campaign and plan of action hereinafter set forth, with full knowledge that the implementation of said plan would materially damage CON EDISON and jeopardize the supply of electricity to consumers on the East Coast of the United States.

22. Defendants aggressively and coercively carried out such campaign and plan of action by means of the measures hereinafter set forth, among others. All such acts and practices were intended by defendants to be, and were in fact, in furtherance of the aforesaid conspiracy and have had the effect of substantially restraining trade and preventing competition in the importation of low sulphur oil into the East Coast of the United States.

23. CON EDISON is the sole supplier of electric power to consumers in most of New York City and Westchester County in the State of New York. Under applicable environmental regulations, CON EDISON is required to burn only low sulphur oil in its plants in New York City and Westchester County. CON EDISON's annual requirements of low sulphur residual oil total

approximately 50 million barrels. From September 1, 1973 through May 31, 1974, CON EDISON has burned 35.3 million barrels of low sulphur residual oil, of which some 11.6 million barrels have been supplied under contract by NEPCO.

24. NEPCO has been a major supplier of CON EDISON's residual oil requirements since 1963. The agreement that was in force in August, 1973 between NEPCO and CON EDISON extended through a term ending March 31, 1980 and obligated NEPCO to supply CON EDISON with low sulphur residual oil in the amount of approximately 23 million barrels per year. CON EDISON was induced to enter into that agreement by the express representation of SOCAL's officers to CON EDISON's officers that SOCAL, a major supplier of low sulphur crude oil to NEPCO, would support NEPCO and make its exceedingly large crude oil reserves throughout the world available to NEPCO to enable NEPCO to meet its needs. The existence of the agreement was common knowledge in the petroleum industry.

25. Under the agreement, the maximum price CON EDISON paid NEPCO for residual oil was to be determined by reference to the prices for the same type product of Humble Oil and Refining Company (a subsidiary of EXXON, a partner of SOCAL, TEXACO and MOBIL in ARAMCO), Asiatic Petroleum Corporation and Amerada Hess Corporation. Payments under the agreement were to be made on or before the 20th day of the month following the month in which deliveries were made, provided NEPCO's invoices were received on or before the 13th day of such following month.

26. As of August, 1973, SOCAL was NEPCO's primary supplier of low sulphur crude oil. In the early 1960s SOCAL and TEXACO—operating through AMOSEAS

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—had found a substantial quantity of low sulphur crude oil in Libya. In 1968, NEPCO entered into a long-term agreement with SOCAL under which SOCAL agreed to supply NEPCO with the major portion of SOCAL's share of AMOSEAS' output, to be delivered by SOCAL to the BORCO refinery. As part of the agreement, SOCAL received a 35% interest in the BORCO refinery and consented to guaranty a loan taken by NEPCO, which guaranty provided that in the event of a default by NEPCO in repayment of the loan, NEPCO's 65% interest in the BORCO refinery would pass to SOCAL. The effect of this agreement was to make Libya a major source of supply of low sulphur oil for the East Coast of the United States and, as the situation existed in August, 1973, if that supply were to be interrupted, there could be substantial brownouts or blackouts in the East Coast of the United States.

27. In January, 1971, SOCAL, TEXACO, MOBIL and most other free world oil companies with interests in OPEC countries, formed a committee known as the London Policy Group (LPG) to plan policy with respect to and to bargain jointly with the OPEC countries, including Libya. The members of LPG agreed, among other things: (a) that no member of LPG would reach any agreement with an OPEC country without the consent of all LPG members and (b) that if an OPEC country took any action against any LPG member, *e.g.*, nationalization of all or part of its oil reserves in that country, the other members of LPG would supply oil to that company, at cost, to the extent of its losses resulting from that action.

28. Negotiations with OPEC countries were carried out jointly by LPG members from the time of LPG's formation until early 1972, when the LPG members whose primary interests were in the Persian Gulf (consisting of

SOCAL, TEXACO, MOBIL and the other major petroleum companies, known within LPG as the "chiefs") in effect split from the LPG members whose primary interests were in Libya (mostly the smaller "independent" petroleum companies). Thereafter, in an effort to protect their monopoly interests in the Persian Gulf area, a number of the major petroleum company members of LPG reached agreement with a number of the Persian Gulf host countries. Specifically, SOCAL, TEXACO, MOBIL and EXXON negotiated an agreement with the Government of Saudi Arabia whereby the Government acquired a 25% participation in ARAMCO.

29. In August, 1973, a number of the smaller "independent" petroleum companies, which were operating in Libya and which had only insignificant holdings in the Persian Gulf area, reached an agreement with the Government of Libya. Under this agreement, 51% of all crude oil produced by those companies would belong to NOC and 49% of the crude oil produced would belong to the companies. The companies would have the right to buy back from NOC most or all of the remaining 51%. Although these smaller companies were LPG members, the LPG did not approve such agreement.

30. SOCAL, TEXACO, MOBIL and other major LPG members also received offers from the Government of Libya for a 51% participation by NOC in their Libyan interests. In their judgment, however, a grant of a 51% interest in their Libyan holdings would have jeopardized their far more vast and more valuable holdings in the Persian Gulf area, where they had succeeded in negotiating much more favorable agreements, including that with the Government of Saudi Arabia for a 25% participation in ARAMCO. Accordingly, SOCAL, TEXACO, MOBIL

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and other major LPG members concertedly decided to reject and did reject this proposal of the Libyan Government.

31. In August, 1973, NEPCO learned that its Libyan source of supply was threatened by these events. Therefore, in an effort to protect itself and to insure adequate oil supplies for its customers and the East Coast of the United States, NEPCO proposed to SOCAL that NEPCO purchase either SOCAL's 50% interest in AMOSEAS or all of AMOSEAS. SOCAL rejected NEPCO's offer for the reason stated in paragraph 30, *supra*.

32. On September 1, 1973, Libya announced that it would nationalize a 51% interest of all companies in Libya that had not previously accepted a 51% participation, including AMOSEAS, other Libyan interests of SOCAL and TEXACO, and the Libyan interests of MOBIL.

33. On September 10, 1973, SOCAL informed NEPCO that the Libyan Government had seized 51% of SOCAL's interest in AMOSEAS, that SOCAL was resisting this takeover, and that as of September 1, 1973, all deliveries of Libyan crude oil by SOCAL were suspended.

34. NEPCO immediately replied, stating that SOCAL's position would violate SOCAL's contractual obligations to NEPCO and reminding SOCAL that 49% of the AMOSEAS-produced crude oil still belonged to SOCAL and TEXACO and that most of the remaining 51% was being offered to SOCAL and TEXACO by NOC on a buy-back arrangement. SOCAL stood firm and refused to honor its contractual commitment. Not only did SOCAL refuse to deliver to NEPCO any Libyan crude oil, it also refused to provide any replacement oil from its other sources. At the same time, SOCAL withdrew its tankers which,

under its agreement with NEPCO, were used to carry the Libyan oil from Libya to the BORCO refinery in the Bahamas. These actions, taken in accord with agreements made among certain LPG members, were designed to protect SOCAL's and TEXACO's interests in the Persian Gulf, including their interests in ARAMCO.

35. Upon the invitation of the Government of Libya, NEPCO opened negotiations with NOC for possible direct purchase from NOC of part of NOC's 51% share of AMOSEAS-produced crude oil. Following SOCAL's announced boycott of NEPCO and its refusal to honor its contract with NEPCO, NEPCO entered into an agreement with NOC for purchase in Libya of the approximate quantity of low sulphur crude oil that SOCAL previously had been supplying. NEPCO's agreement with NOC, however, was at substantially higher prices per barrel and on distinctly less favorable terms than NEPCO's agreement with SOCAL. In addition, since SOCAL had withdrawn its tankers, NEPCO had to arrange for and bear the greatly increased cost of transporting the oil from Libya to the BORCO refinery.

36. Thereafter, pursuant to an unlawful conspiracy whose object was to protect their monopoly interest in and virtually complete control over all aspects of the production, transportation, refining and marketing of crude oil in the Persian Gulf area, SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, embarked on a course of action designed to prevent NEPCO from dealing with the Libyan Government, from purchasing low sulphur crude oil from NOC, from transporting such low sulphur crude oil, from refining it and from distributing it to its customers, including CON EDISON.

BLEED THROUGH

Exhibit D

37. On or about September 13, 1973, R. G. Weinand, Executive Vice President of NEPCO, received a telephone call from L. W. Folmar, a Vice President of TEXACO and Chairman of the Board of Directors of Texaco Overseas Petroleum Company. Mr. Folmar informed Mr. Weinand that he had heard that NEPCO had put a ship into Libya to lift oil which had been taken from AMOSEAS, that this oil still belonged to TEXACO, and that if NEPCO lifted this oil, TEXACO would pursue all means to prevent its use by NEPCO.

38. Minutes later, D. L. DeBaun, a Vice President of NEPCO, received a telephone call from H. A. Navis, a Vice President of SOCAL and an officer of Chevron Oil Trading Company. Using almost the same words as Mr. Folmar, Mr. Navis warned NEPCO not to take any oil from NOC and threatened action to prevent NEPCO from making use of any Libyan oil.

39. On the same day, both TEXACO and SOCAL sent letters to NEPCO restating their position, insisting that the Libyan oil was theirs, and threatening action if NEPCO actually lifted the oil.

40. In spite of the threats by SOCAL and TEXACO, NEPCO did lift the oil which it had purchased from NOC. It was loaded at the instruction of NOC at a terminal in Libya operated by a subsidiary of MOBIL.

41. Thereafter, and pursuant to the conspiracy, SOCAL, TEXACO and MOBIL decided to and did institute a series of groundless legal actions around the world in an effort to harass NEPCO and to prevent NEPCO from transporting and refining the Libyan oil it had purchased from NOC and from distributing it to its customers, including CON EDISON.

Exhibit D

42. A subsidiary of SOCAL and a subsidiary of TEXACO brought an action in Italy against an Italian refinery which had in its possession certain oil belonging to NEPCO. Although claiming in this action that this "hot oil" was rightfully "its oil", at no time would SOCAL agree to deliver the oil either to NEPCO, as it was obligated to do under its supply agreement with NEPCO, or to any of NEPCO's East Coast customers, including CON EDISON.

43. MOBIL, a SOCAL and TEXACO partner in ARAMCO but not in AMOSEAS, then brought an action in the Bahamas against a Bahamian subsidiary of NEPCO alleging that the oil NEPCO had purchased from NOC rightfully belonged to MOBIL, notwithstanding the fact that MOBIL did not produce that type of oil in Libya.

44. Concurrently, a third action was brought in the Bahamas by TEXACO against a subsidiary of NEPCO trying to prevent NEPCO from using the oil bought from NOC and lifted in Libya.

45. As a result of the foregoing conspiracy, acts and practices of SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, NEPCO was unable to meet its full obligations to CON EDISON to deliver low sulphur residual oil. As a result, CON EDISON was required to purchase substantial amounts of low sulphur residual oil from other suppliers at prices substantially higher than those provided for in CON EDISON's agreement with NEPCO.

46. As a further result of the actions of SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, the cost to NEPCO of Libyan low sulphur crude oil immediately rose from a pre-September 1, 1973, price of $3.60 per barrel delivered to the BORCO refinery in the Bahamas to

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$6.80 per barrel, an increase of almost 90%. Thereafter, and as a result of the conspiracy, the price of low sulphur crude oil continued to rise precipitously.

47. This increase in the direct cost per barrel of low sulphur crude oil and the increase in indirect costs to NEPCO resulting from the foregoing acts by SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10, led NEPCO to seek to increase the price that NEPCO charged CON EDISON for those amounts of low sulphur residual oil which it was still able to supply to CON EDISON. Two days after SOCAL had announced its intention not to deliver Libyan crude oil to NEPCO, NEPCO informed CON EDISON that replacement oil, to the extent available, would henceforth be offered at a price increase of up to $3.20 per barrel of low sulphur residual oil on terms of payment five days after delivery. Thereafter, and as a result of the conspiracy, the price charged CON EDISON by NEPCO for low sulphur residual oil continued to rise precipitously.

48. After notification by NEPCO of its price increase, CON EDISON tried to obtain low sulphur residual oil from other sources. No major member of the LPG submitted an offer.

49. As a result of the foregoing conspiracy, acts and practices, in the period from September 1, 1973 to date, CON EDISON has suffered damages in the amount of fifty million dollars ($50,000,000) as a result of greatly increased costs for its low sulphur residual oil requirements. Such damages are continuing.

50. In addition, as a result of the foregoing conspiracy, acts and practices, NEPCO has demanded that CON EDISON pay NEPCO within five days after delivery instead of as provided in the agreement between CON

EDISON and NEPCO. In the period from September 1, 1973 to date, this has resulted in damages of one million four hundred thousand dollars ($1,400,000) in the form of increased interest costs to CON EDISON. Such damages are continuing.

51. As a result of the foregoing conspiracy, acts and practices, and the threatened loss of its supplies of residual oil, CON EDISON has thus far had to expend six hundred thousand dollars ($600,000) to prepare for conversion of a portion of its oil burning capability to a coal burning capability.

52. Finally, as a result of the foregoing conspiracy, acts and practices, CON EDISON has lost good will in its service area and among its customers; CON EDISON has been forced to omit its dividend for the second quarter of 1974, the first such dividend it has omitted since 1885; the confidence of the financial community in CON EDISON has diminished, making investors reluctant or unwilling to accept CON EDISON securities, forcing CON EDISON to postpone a scheduled issue of common stock planned for offering in May 1974, and increasing the cost to CON EDISON of marketing such securities and of obtaining other forms of financing necessary for CON EDISON to maintain its financial integrity. Damages to CON EDISON as a result of the foregoing are substantial and are continuing and their amount cannot be measured or quantified at this point. When such damages are susceptible of measurement, CON EDISON will amend this complaint to set forth such damages specifically.

53. By virtue of electric fuel adjustment provisions contained in the rate schedules of CON EDISON and approved by the Public Service Commission of the State of

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New York, a portion of the fuel price increases referred to in paragraph 49, *supra*, has been borne by CON EDISON's electric and steam customers. In the event CON EDISON recovers damages for such increases, a similar portion of such recovery will be refunded to said electric and steam customers in a manner and to the extent approved by the New York Public Service Commission.

54. Unless SOCAL, TEXACO, MOBIL and JOHN DOES 1 through 10 are enjoined from continuing in the illegal and conspiratorial acts and practices described above, CON EDISON will continue to suffer damages in the form of increased costs, it will continue to bear the risk of possible brownouts or blackouts of its service area due to unavailability of low sulphur residual oil and it will continue to experience erosion of its financial integrity and its ability to obtain financing sufficient to enable it to continue to provide adequate service to the public. It is and will be virtually impossible to ascertain or measure in damages the extent and nature of the injury that will be inflicted upon CON EDISON and its services as a result of the foregoing, an injury for which CON EDISON has and will have no adequate remedy at law.

SECOND CLAIM FOR RELIEF AGAINST SOCAL

55. CON EDISON repeats and realleges the allegations of paragraphs 1 through 4 and 10 through 54 of this complaint.

56. SOCAL has deliberately refused to supply NEPCO with low sulphur crude oil since September 1, 1973. It has done so intentionally and with knowledge of NEPCO's obligation to CON EDISON under NEPCO's supply agreement with CON EDISON. SOCAL did so knowing that

unless it met its obligations to NEPCO, NEPCO would be unable to meet CON EDISON's low sulphur residual oil requirements and that if CON EDISON were able to secure such low sulphur residual oil, it would be able to do so only at greatly increased cost. By wrongfully, maliciously and wilfully refusing to supply NEPCO with low sulphur crude oil, SOCAL intentionally caused NEPCO to be unable to perform under its agreement with CON EDISON and has caused and is causing CON EDISON damages as set forth in paragraphs 49 through 52 and 54, *supra.*

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

A. That this Court order, adjudge and decree that defendants have violated Sections 1 and 2 of the Sherman Act as alleged in the FIRST claim for relief;

B. That with respect to the FIRST claim for relief, CON EDISON be awarded judgment for $156,000,000 or three times the $52,000,000 damages presently known to CON EDISON, plus three times such other and further damages that CON EDISON has sustained and will sustain in the future as a result of defendants' unlawful acts and practices, plus the costs of this action including reasonable attorneys' fees;

C. That with respect to the FIRST claim for relief, defendants and each of them, and their subsidiaries and affiliates, be enjoined and restrained from combining, conspiring, obstructing or in any way interfering with or attempting to interfere with the ability of NEPCO and others in purchasing, lifting, transporting, refining and distributing Libyan crude oil;

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Exhibit D

D. That this Court order, adjudge and decree with respect to the SECOND claim for relief, that SOCAL intentionally and wrongfully caused NEPCO to be unable to perform under its agreement with CON EDISON and CON EDISON shall be awarded judgment for $52,000,000 plus such other and further damages that CON EDISON has sustained and will sustain in the future as a result of SOCAL's wrongful acts, and punitive damages of an additional $52,000,000 plus the costs of this action;

E. That the Court grant such other relief as may be appropriate.

Dated: New York, New York
June 20, 1974

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By .....
Asa D. Sokolow
575 Madison Avenue
New York, New York 10022
(212) 688-7800

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure plaintiff demands a trial by jury.

By .....
Asa D. Sokolow

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EXHIBIT E

Sections 1 and 2 of the Sherman Act, 15 U. S. C. §§ 1, 2 provide in relevant part:

> "SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. . .
>
> SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States or with foreign nations, shall be deemed guilty of a misdemeanor. . ."

Sections 4 and 16 of the Clayton Act, 15 U. S. C. §§ 15, 26 provide in relevant part:

> "SEC. 4. Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. . .
>
> SEC. 16. Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven, and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity. . ."

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EXHIBIT F

Federal Rule of Civil Procedure 12(b) provides in relevant part:

> "(b) Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. . . . If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

Federal Rule of Civil Procedure 56 provides in relevant part:

> "(b) A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.
>
> (c) . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."